

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

| | | |
|-------------------|------------|----------------------------|
| Robert Dana Green |) | C/A No.: 2:20-cv-04121-DCN |
| | Plaintiff, |) |
| vs. |) |) |
| |) |) |
| Philip Habermehl |) |) |
| | Defendant. |) |

THE UNITED STATES OF AMERICA'S NOTICE OF REMOVAL

Comes now the United States of America, by and through the undersigned attorneys, and hereby gives notice pursuant to 28 U.S.C. § 1441 and §1442 that it is removing this state-court civil action to federal District Court on the following grounds:

1. On July 28, 2020, Plaintiff, Robert Dana Green filed a 30-Day Summons and Complaint in Dorchester County, State of South Carolina, in the Common Pleas Court for the First Circuit, Case No. 2020-CP-18-01112, naming Philip Habermehl as defendant in a motor vehicle negligence action. A copy of the Original Complaint is attached as Exhibit 1.
2. The initial Complaint filed by Plaintiff sounds in negligence for the personal injury and damages of the plaintiff. Mr. Habermehl is deemed to be eligible for Federal Tort Claims Act coverage as an exclusive remedy if acting within the scope of his employment at the time of the incident. The Federal Tort Claims Act coverage is the exclusive remedy if Mr. Habermehl was acting as a covered person in which Congress provided.
3. The Attorney General, acting by and through the United States Attorney for the District of South Carolina, has certified that Mr. Habermehl was at all relevant times, acting as a covered person within the scope of his employment at the Department of Interior. 42 U.S.C. §233(c) and 28 C.F.R. §15.4.
4. Plaintiff served the aforementioned 30-Day Summons and Complaint on Mr. Habermehl, but has not properly served the United States or its Agency under Federal Rule of

Civil Procedure 4(i), thus making this Removal timely under federal rule. The United States is entitled to a 60-Day Summons under Federal Rule of Civil Procedure 12(a)(2).

5. The foregoing action constitutes an action that is removable to this Court pursuant to 28 U.S.C. §§1441, 1442, and 1446. This Court has original jurisdiction pursuant to 28 U.S.C. §1331 and §1346.

6. A copy of this notice will be filed with the Clerk of Court for Dorchester County, State of South Carolina, pursuant to 28 U.S.C. §1446, after the filing of the original of this notice in this Court.

7. Plaintiff has been contacted and consents to the Removal to federal court.

8. Simultaneous with the filing of this Notice of Removal, the United States of America is filing a motion to substitute The United States of America as the properly named defendant under 28 U.S.C. §2679(d)(2), and removing Mr. Habermehl from the caption.

9. This action against the United States of America raises one or more federal questions; none of which are jurisdictionally proper in state court.

WHEREFORE, we seek to have the entire civil action, now pending in the Court of Common Pleas in Dorchester County, South Carolina, removed to the United States District Court for the District of South Carolina, by consent of the parties.

PETER M. MCCOY, JR.
UNITED STATES ATTORNEY

By: s/Lee E. Berlinsky
Lee E. Berlinsky (ID # 05443)
Assistant United States Attorney
151 Meeting Street, Suite 200
Charleston, South Carolina 29401
Telephone: (843) 266-1679
lee.berlinsky@usdoj.gov

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